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REQUESTED BY :

State Planning and Building Commission

OPINION BY :

ROBERT MORRISON, The Attorney General  
H. B. Daniels, Assistant Attorney General

QUESTIONS :

1. Does the State Planning and Building Commission, under Section 3, relating to "State Capitol and State Office Buildings in Capitol Vicinity", and under Section 7A, Laws of 1956, Chapter 65, have the authority to construct new buildings either on the present Capitol site or in the vicinity of the existing State Capitol which would be in the following categories:

(a) New separate buildings for each of the houses of the state legislature?

(b) Additional wings to the existing Capitol Building to accommodate both houses of the legislature?

(c) Construction of a new building which would house not only both houses of the legislature, the Governor and the Supreme Court, but also provide needed ordinary office space for present state employees now housed in state owned or rented facilities?

(d) Does the State Planning and Building Commission have the authority to continue the acquisition of parcels of real estate for any of the foregoing purposes in questions a, b and c?

2. Does the State Planning and Building Commission have authority, under the laws of the United States and under the Constitution and laws of the State of Arizona, to authorize the construction of a State Capitol in Papago Park?

CONCLUSIONS :

1. (a) Yes.  
(b) No.  
(c) Yes.  
(d) Yes.

2. No.

Some of the purposes set forth in Ch. 65, Laws of 1956, are:

" . . . to carry out such improvements, programs and projects as may be . . . assigned to the commission by the legislature."

After defining the term "Commission" to mean State Planning and Building Commission, the legislature defined "improvement" to mean alteration, enlargement, rehabilitation or repair of existing state building; "program" means the planning of future needs for lands and buildings in terms of space, functional relationship, equipment and special requirements, and "project" means the acquisition of real property or the construction of new state buildings, or both. (A. R. S. § 41-571.01)

For the purpose of carrying out the provisions of this Act, the legislature made the following financial arrangement:

"Section 7. APPROPRIATIONS

A. All unexpended and unencumbered balances remaining in the appropriations made pursuant to chapter 107, Laws of 1952, as amended by chapter 146, Laws of 1954, shall not revert to the general fund, but instead are reallocated and appropriated to the state planning and building commission for the purpose of carrying out the directions in section 3, of which the sum of two and one-half million dollars is made immediately available for expenditure . . . upon approval by the legislature of the plans to be prepared pursuant to section 3, and under such terms and conditions as the legislature may prescribe."

The job of purchasing land, erecting state buildings and improving state buildings, delegated to the Commission, is found in Section 3, Chapter 65, Laws of 1956. Subsection (A) of this section delegates full authority to the Commission over program, projects and improvements relating to the State Capitol and State Office Buildings. Subsection (B), Paragraph (1) of said section, empowers the Commission with the duty of:

- (a) preparing a program for improvement of the existing capitol building and grounds,
- (b) and to proceed with "actual alteration, rehabilitation or repair" of such structure and grounds, and
- (c) to report to the legislature on progress prior to December 31, 1956.

Further, Paragraph 2, of Subsection (B) of said section, empowers the Commission to prepare a program of one or more projects for the acquisition of real property in the vicinity of the Capitol and for construction of new state office building facilities on such land (b) to proceed with "actual construction" under such program.

Likewise, the Commission was commanded to prepare a program of improvements of existing state office building facilities, in the vicinity of the Capitol building.

Also, the Commission is commanded to prepare a master plan for orderly and efficient development of the Capitol building area, including the programs mentioned above.

Finally, this agency was directed to acquire land needed for the projects and improvements referred to in this section. These then are the express directions of the legislature to the Commission. We now answer the questions posed:

The answer to question 1 (a) is yes. Authority exists for the building of new separate buildings (not attached to existing buildings) for each of the houses of the legislature. That authority is expressed in Subsection B (2) which permits the Commission to proceed with the "actual construction" of new state office facilities.

The answer to question 1 (b) is no. In the sense that a "wing" is understood to be and means a part or feature of a building, constituting an appendage or a part or an enlargement of that building, there is no authority to construct additional wings to the existing Capitol Building. The legislature has defined improvements to include enlargement. Subsection B (1) of Section 3 provided as follows:

"B. The commission is directed to proceed with the following programs, projects and improvements:

1. Preparation of a program of improvements for the alteration, rehabilitation or repair of the interior and exterior of the existing capitol building and grounds, and the commission is directed to proceed with the actual alteration, rehabilitation or repair of the existing capitol building and grounds, progress reports to be submitted to the legislature and governor not later than December 31, 1956."

The legislature, in subsection B (1) of Section 3 of the Act, expressly omitted the word "enlargement" which is included in the definition of improvement. We

think this is significant in deciding legislative intent. The placing of additional wings to the Capitol would constitute an enlargement. This idea had been considered previously. Doubtless, it was considered and disapproved by the Twenty-second Legislature. It is our opinion that the legislature did not desire nor direct the Commission to add wings to the existing Capitol.

The answer to question 1 (c) is yes, provided additional legislative approval and direction to proceed are obtained. Subsection B (4) provides for the preparation of coordinated master plan for the orderly and efficient development of the Capitol area including the programs discussed above.

The answer to question 1 (d) is yes. The Commission has authority to continue acquisition of real estate. Subsection B (5) reads:

"The commission is directed to proceed with the following  
... projects ... :  
\* \* \* \* \*

5. Acquisition of such parcels of real property in the vicinity of the present capitol building as may be needed for projects and improvements referred to in this section."

Clearly, this is a direct command to the Commission to purchase land for the purposes of new state office buildings. The acquisition of land is by definition a project within the definition set forth in A. R. S. § 41-571.01. We see no reason why the Commission cannot purchase land under the language expressed above.

In answer to question 2, Article 20, Sec. 9, Constitution of Arizona, reads:

"The capitol of the State of Arizona, until changed by the electors voting at an election provided for by the Legislature for that purpose, shall be at the city of Phoenix, but but no such election shall be called or provided for prior to the thirty-first day of December, nineteen hundred and twenty-five," (Emphasis supplied)

For the purpose of determining question No. 2 herein, it is important that the term "at" be construed. Primarily, "at" is a proposition of simple local position. In this sense it has been variously defined, depending on the context. In Arizona it has been defined as "in or about". See Moreno v. Moore, 57 P.2d 316, 317. The weight of authority however is that "at" means "in" or "within" and more generally means "within" than "without". Nicholas v. Yamhill County, 203 Pac. 593, 597. See: Ann. Case, 1912 B 1070. In view of the

foregoing authorities thus cited, for the purpose of this opinion we determine the word "at" as used in Art. 20, Sec. 9, Constitution of Arizona, to mean "in".

It is, therefore, our opinion that the Capitol building cannot be placed at or in Papago Park without the provisions of Art. 20, Sec. 9, supra, being first amended.

There are, too, statutory considerations which prohibit the Commission from placing the Capitol building in Papago Park. The following quoted words are significant: All functions and records of any state agency relating to planning of projects relating to the Capitol "in the vicinity of the state capitol" are transferred to the Commission. Sec. 3, supra. Alteration and repair of the "existing capitol building and grounds" are a part of the program of the Commission. A coordinated master plan for the development of the "capitol area". Sec. 3, Ch. 65, Laws of 1956. The language used throughout the entire Act indicates that the intention of the legislature was to confine all programs, projects and improvements to be made by the Commission which relate to the Capitol building to the area where the present Capitol structure is located. It is, therefore, our conclusion that the Commission as presently empowered by the legislature cannot erect a capitol building at Papago Park.

Finally, it is our opinion that the Commission cannot erect a Capitol structure at Papago Park, unless the Federal Government by an act grants this privilege. The United States is the grantor. It has granted to the State of Arizona an estate in fee simple defeasible. Attorney General's opinion No. 56-22. The transfer to the state of the real property under discussion was set forth in 46 Stat. 142, the pertinent part of which reads:

"2. All the remainder of Government lands in the said Papago Saguaro National Monument, in Maricopa County, Arizona, except such parts thereof as are hereinafter authorized to be purchased by the city of Tempe, Arizona . . . and the same are hereby, granted to the State of Arizona for park, recreation, or public-convenience purposes; . . . Provided further, That the lands hereby granted shall be used by the State of Arizona . . . only for the purposes herein indicated, and if said lands, or any part thereof, shall be abandoned for such use, such lands or such part shall revert to the United States; and the Secretary of the Interior is hereby authorized and empowered to declare such a forfeiture of grant and restore said premises to the public domain if at any time he shall determine that the State . . . has abandoned the lands for the uses herein indicated, and such order of the Secretary

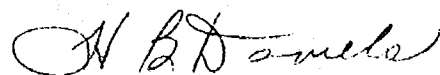
shall be final and conclusive; and thereupon and thereby said premises shall be restored to the public domain and freed from the operation of these grants: . . ."

Thus, it can be seen that the federal government retains a reverter's right to the premises under discussion. If the land or any part thereof is abandoned in terms of its uses as indicated in the grant, the whole or that part which is abandoned will, if the Secretary makes a declaration of forfeiture, revert to the United States.

We are now confronted with this question: May the Capitol be built at Papago Park under any of the uses set forth in 46 Stat. 142? We are of the opinion that it cannot. Obviously, the Capitol cannot be considered as being for a park or recreation. Can it be said that it is a place of public convenience? It may be argued that under the use of "public convenience" the erection of the Capitol building is possible. This would be reasoning "public convenience" out of context and so the intent and purpose of Congress would be frustrated. The whole intent, seemingly, couched in the language of the Act, indicates that the Congress of the United States wanted the land to be used as a playground for the public or a retreat for the leisure time of the public. In this light, then, roads and ways, buildings and shelters may be provided for the public convenience. It was never considered as a location for a building to house the governmental officials of the State of Arizona where they might carry on their business.

Therefore, in order that the premises may not revert to government by reason of the State abandoning the uses which are indicated in the grant, we think that it would be necessary to seek special legislation from Congress in order to build the State Capitol at Papago Park.

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